

PCR

LAW OFFICE OF
Kristy Grafton Goldberg, LLC
ATTORNEY AT LAW

September 25, 2014

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
SEP 29 2014
S.C. SUPREME COURT

RE: Isaac Flynn, SCDC # 354468, vs. State of South Carolina
Appeal of Case No. 2013-CP-28-659

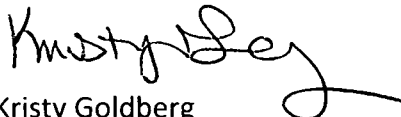
Dear Mr. Shearouse,

Enclosed for filing is a Notice of Appeal in the above referenced case. Also enclosed are a certificate of service and a copy of the original court order which is to be challenged on appeal. I would appreciate it if you could file the Notice of Appeal and mail a date-stamped copy back to me in the enclosed pre-stamped envelope.

By copy of this letter I am informing the Office of Appellate Defense of this Appeal so that they may begin representation of Mr. Flynn, as I was appointed as counsel in this matter. I am also hereby requesting that Appellate Defense obtain a copy of the court transcript within the time required by this court.

Please let me know if you have any questions or concerns regarding this matter.

Respectfully,


Kristy Goldberg

CC: Megan Harrigan
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Issac Flynn, SCDC # 354468
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Kershaw County Clerk of Court
ATTN: Lynn Lyons
Post Office Box 1557
Camden, South Carolina 29021 - 8557

Office of Appellate Defense
Chief Appellate Defender – Robert Dudek
PO Box 11433
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2013-CP-28-659

RECEIVED
SEP 29 2014
S.C. SUPREME COURT

Isaac Claude Flynn, SCDC # 354468, Appellant

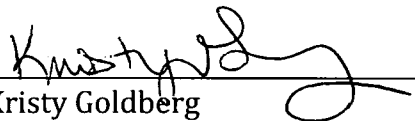
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant Isaac Flynn hereby appeals from the Order of the Honorable L. Casey Manning presiding Judge for the 5th Judicial Circuit, filed September 24, 2014 and received by counsel for the Applicant on September 25, 2014 in the matter of Isaac Flynn v. State of South Carolina, Case No. 2013-CP-28-659.

September 25, 2014



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
Phone (803) 252-2299
kristy@kristygoldberglaw.com

Other Counsel of Record:
Assistant Attorney General, Megan Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2013-CP-28-659

RECEIVED
SEP 29 2014
S.C. SUPREME COURT

Isaac Claude Flynn, SCDC # 354468, Appellant

v.

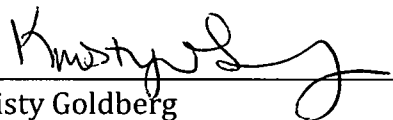
State of South Carolina, Respondent.

PROOF OF SERVICE

Personally appeared before me, Kristy Goldberg, Esquire, who being duly sworn, deposes
and states:

She is the counsel of record for Applicant;
Service by mail is proper in this instance; and
She has served the NOTICE OF APPEAL on the following party on September 25, 2014 by
depositing one copy in the U.S. Mail, postage prepaid:

Assistant Attorney General, Megan Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211



Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
Phone (803) 252-2299
kristy@kristygoldberglaw.com

Other Counsel of Record:
Assistant Attorney General, Megan Harrigan
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013-CP-28-659

Isaac Claude Flynn

State of South Carolina

RECEIVED

SEP 29 2014

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

S.C. SUPREME COURT

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

FILED FOR RECORD
2014 SEP 24 AM 11:30
JUDGE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code
For Clerk of Court Office Use Only

Date: TEST True, Correct & Certified
Copy of Original on File in this Court.

James McDonald
Clerk of Court Kershaw County

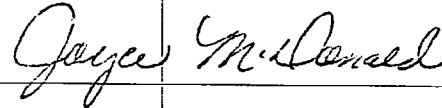
This judgment was entered on **24th day of September, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **24th day of September, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Kristy Grafton Goldberg Law Office Of Kristy Goldberg
1720 Main Street, Suite 301 Columbia, SC 29201

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Joyce McDonald - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 Isacc Flynn, #354468)
 Plaintiff,)
 vs.)
 State of South Carolina)
 Defendant.)

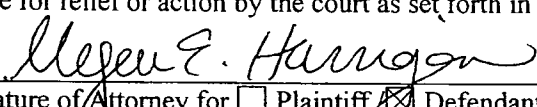
IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-28-0659

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

RECEIVED

FILED
 RECORD
 2014
 SEP 16
 AM 11:30
 S.C. SUPREME COURT
 JOYCE MCDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

Plaintiff's Attorney: Kristy G. Goldberg, Bar No. 72674 Address: 1720 Main St. Ste 301, Columbia SC 29201 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Megan E. Harrigan, Bar No. 10010 Address: PO Box 11549, Columbia SC 29202 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant 	9/16/14 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
 COUNTY OF KERSHAW)
)
 Isacc Flynn, SCDC # 354468,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-28-0659

ORDER OF DISMISSAL

RECEIVED
 FILED FOR RECORD
 2014 SEP 24 11:11:00
 JUDGE HONORABLE
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed September 24, 2013. The State made its Return on December 11, 2013, requesting an evidentiary hearing be held. Thereafter, on July 8, 2014, Applicant filed an Amended Application for Post-Conviction Relief. An evidentiary hearing into the matter was convened on July 16, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Kristy Goldberg, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Kershaw County

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court.

Jessie McDonald
 Clerk of Court Kershaw County

Clerk of Court. Applicant was represented by Cornelius Riley, Esquire, of the Kershaw County Public Defender's Office. On February 25, 2013, Applicant appeared before the before the Honorable G. Thomas Cooper, Jr., where he waived presentment to the Kershaw County Grand Jury and pled guilty to Attempted Dissemination of Obscene Material to Person under 18 Years of Age (2013-GS-28-0088), Criminal Solicitation of a Minor (2013-GS-28-0089), Attempted Criminal Sexual Conduct with a Minor, 2nd degree (2013-GS-28-0090), and Criminal Sexual Conduct with a Minor, 2nd degree (2013-GS-28-0091). Judge Cooper sentenced Applicant to imprisonment for ten years for Attempted Dissemination of Obscene Material, ten years for Criminal Solicitation of a Minor, twenty years for Attempted Criminal Sexual Conduct with a Minor, and twenty years for Criminal Sexual Conduct with a Minor, with all sentences to be served concurrently. Applicant did not appeal his guilty plea or sentence.

On September 24, 2013, Applicant filed an application for post-conviction relief alleging ineffective assistance of counsel, involuntary guilty plea, and due process violations. On July 8, 2014, Applicant, through counsel, filed an amended application, setting forth the following allegations:

1. Ineffective Assistance of counsel for failing to communicate with the Applicant regarding his case's status and his legal rights;
2. Ineffective assistance of counsel for failing to stand down prior to the trial court accepting the plea when the prosecutor made several irrelevant and inflammatory accusations against Mr. Flynn with did not result on criminal charges; and
3. Ineffective assistance of counsel for failing to file a notice of appeal.

At the evidentiary hearing, Applicant proceeded forward solely on the allegations alleged in his amended application.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel, Cornelius J. Riley, Esquire (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records from the Kershaw County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that Counsel was appointed to represent him and that they met four times prior to his guilty plea. He testified that he does not believe that Counsel met with him enough and that he and several family members attempted to contact Counsel to discuss his case. He testified that he wrote various letters complaining of Counsel's performance and requesting an update on his case's progress (such as an October 15, 2012 letter to the Kershaw County Clerk of Court introduced as Applicant's Ex. No.), but that these letters went unanswered. He elaborated that similar letters were also sent to the South Carolina Bar and Douglas Strickler as the Chief Public Defender for the Fifth Judicial Circuit. He testified that he wanted Counsel to be relieved because he did think Counsel could represent him to the best of his ability. He acknowledged that he told the plea court while under oath that he was satisfied with Counsel's performance, but testified that this was only at Counsel's urging in order to plead guilty.

He testified that he reviewed “parts” of his discovery with Counsel, including his statements, witness statements, transcripts from online conversations, and photographs of his genitalia that he sent to a fourteen year old. He testified that he asked Counsel for a personal copy of his discovery materials to keep with him in the county jail but that Counsel refused to provide him with a copy. He testified that Counsel presented him with a twenty year plea offer, but that Counsel advised him that he could negotiate a better plea offer. He testified that this offer came while the case was being handled by the Kershaw County Solicitor’s Office and before the Attorney General’s Office began prosecuting the case. He acknowledged that he understood the State would be requesting a twenty year sentence if he pled guilty and that he understood he could possibly receive an aggregate term of sixty years imprisonment if the sentences were run consecutively by the plea court. He testified that Counsel reviewed possible sentences, as well as various other constitutional rights, with him prior to his plea, all of which were memorialized in a signed, written document. See Respondent’s Ex. No. 1. He acknowledged that this included the right to file an appeal within ten days of his guilty plea proceeding. He testified that he “wanted to get it over with” quickly and that is why he pled guilty.

He testified that he recalled his guilty plea and acknowledged that he told the plea court he was guilty and agreed with the facts presented by the State. He testified that he admits to certain allegations, such sending photographs of his genitalia to minors and having a physical, sexual encounter with a fifteen year old girl, but denied other inappropriate conduct, such as asking twelve year old girls to perform various activities topless and sleeping with another minor

in Maryland as cited by the State during his sentencing proceeding. He testified that he was not charged with any additional crimes stemming from the alleged conduct and, therefore, Counsel should have objected to these improper comments from the State. He acknowledged that Counsel did object to these comments, but that Counsel did not do enough to protect his rights, such as requesting he be allowed to stand down.

He testified that following, the guilty plea, he remained in the courtroom while Counsel went into the hallway with his family. He testified the he tried to get Counsel's attention to let him know that he wanted to appeal, but that he was not able to make contact with counsel. He acknowledged that he understood that he only had ten days to file a notice of appeal. He testified that he attempted to notify Counsel that he wanted to file appeal by filing out an inmate grievance form, but did not present any such forms to this Court.

Following Applicant's testimony, Counsel was called to the stand by Respondent. He testified that he had been practicing law since May of 1986 and that he is the Chief Public Defender for Kershaw County. He testified that he was appointed to represent Applicant shortly after his arrest and met with him at least six times at the Kershaw County Detention Center based on detailed notes in his file. He testified that he filed all appropriate discovery motions and reviewed all materials thoroughly with Applicant. He testified that he advised Applicant that it was not in his best interest to have a personal copy of the discovery materials with him while incarcerated pre-trial due to the risk of dissemination amongst other inmates, especially in light of the charges involving sexual acts and minors, and that Applicant ultimately agreed with him and declined to receive a copy. He characterized the State's evidence as strong, including

“extensive transcripts of online chats between [Applicant] and a fourteen year old girl,” evidence that he traveled to South Carolina to have sexual relations with her, a full confession, and evidence of other sexual conduct with a fifteen year old girl. He testified that Applicant would have likely been convicted of all charges if he had proceeded to trial. He testified that Applicant wrote him frequently and he tried to respond to all letters. He testified that he was aware of other alleged conduct of Applicant, including additional activity in South Carolina and in Maryland, but that none of these activities were ever indicted and that he did not believe would be indicted based on conversations with the State.

He testified that Applicant was insistent that he wanted to plead guilty from the inception of their attorney-client relationship and that Applicant’s paramount concern was negotiating a favorable plea with the State. He testified that Applicant did not provide him with any defenses or possible witnesses and that his investigation yielded none as well. He testified that he advised Applicant of the elements of all indicted offenses, the sentence exposure of up to sixty years imprisonment, and all constitutional rights. He testified that the case was originally being prosecuted by the former Assistant Solicitor Ron Moak of the Kershaw County office of the Fifth Circuit Solicitor’s Office. He testified that Moak presented him with an informal twenty year offer that was not in writing. He testified that he advised Applicant of this offer, but at Applicant’s request, kept attempting to negotiate a more favorable plea offer. He testified that shortly thereafter, Moak resigned suddenly from office and the case was transferred to the Attorney General’s Office for prosecution. He testified that he attempted to negotiate a plea with the new prosecutor to no avail, other than a recommendation for twenty years imprisonment. He

testified that during an in-chambers discussion between both parties and the plea court, he received assurances from the plea court that his client would receive concurrent time, effectually capping his sentence exposure at twenty years imprisonment. Counsel testified that he relayed this information to his client, who decided to plead guilty. He testified that he advised Applicant that he would ask the plea court for a more lenient sentence, but that he could receive a sentence of up to twenty years imprisonment. He testified that he memorialized these discussions with Applicant into a pre-plea waiver form, introduced as Respondent's Ex. No. 1, which he reviewed with Applicant and Applicant signed. He testified that it was ultimately Applicant's decision to plead guilty and he thought it was in Applicant's best interest.

He testified that during the plea, the prosecutor mentioned other activities that were not subject to the indictments Applicant was pleading guilty. He testified that he objected to this conduct and asked the court to limit the scope to just the indicted offenses. See Tr. p. 13. He testified that following his objection, the plea court asked the State to clarify the conduct giving rise to each indictment and that Applicant had not been indicted for any other conduct. See Tr. p. 14-15. He elaborated that he objected because he thought the State's comments were inappropriate and that he thinks any possible error or prejudice was cured by the plea court's clarification of the indicted offenses immediately following his objection. Additionally, he testified that he did not seek withdrawal Applicant's plea or ask that Applicant be able to stand down, because there was no formal plea negotiation and he was afraid that his client could receive a harsher sentence of up to sixty years in contrast to the assurances from the plea court of a sentence of no more than twenty years.

He testified that following the plea, he spoke with Applicant's family and then remained in the courtroom to attend to other matters. He testified that Applicant never attempted to contact him following the plea, both while he remained in the courtroom and the days following the plea. He testified that Applicant never requested he file an appeal. He testified that he advised Applicant orally and in writing that he had ten days to file an appeal and that the plea court also advised him of this during his plea. He testified that he would have filed an appeal on Applicant's behalf if requested to do so, but that neither Applicant nor his family ever requested one.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds that Counsel's testimony is credible and should be afforded great weight; conversely, this Court finds that Applicant's testimony lacks credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application and establishing that he is entitled to relief. Abney v. State, 408 S.C. 41, 45, 757 S.E.2d 544, 546 (S.C. Ct. App. 2014), *reh'g denied* (Apr. 24, 2014) (citing Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)). Where ineffective assistance of counsel is

alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Abney, 408 S.C. at 46, 757 S.E.2d at 546 (citing Strickland, 466 U.S. at 690). With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled

guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985); Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Below are this Court's findings in regards to each of Applicant's specific allegations of ineffective assistance of counsel:

Allegation that Counsel did not effectively communicate with Applicant regarding his legal rights and his case's status

Applicant alleges that Counsel was ineffective failing to properly communicate with him regarding his case's progression and his legal rights. At the evidentiary hearing, Applicant testified that Counsel only met with him four times and did not advise him of his constitutional rights and case status despite repeated requests. In contrast, Counsel's credible testimony reveals that he met with Applicant at least six times based on detailed notes in his file and reviewed all rights with Applicant, memorialized in a written document signed by Applicant. See Respondent's Ex. No. 1. This Court finds that Applicant has failed to meet his burden of establishing any deficiency in regards to this allegation. This Court finds that Counsel's performance was reasonable and prudent based on the facts and circumstances of this case and that Applicant has failed to establish any deficiency of Counsel. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiencies, as there is no reasonable likelihood that the result of the proceeding would have been different or

that Applicant would have proceeded to trial. The uncontroverted testimony from both Applicant and Counsel was that Applicant wanted to plead guilty and understood that that he could receive a sentence of up to sixty years imprisonment. Therefore, this Court finds that Applicant has failed to meet his burden of proof in regards to both deficiency and prejudice and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to stand down following the prosecutor's comments regarding unindicted alleged conduct by Applicant

Applicant alleges that Counsel was ineffective because he "had a duty to stand down prior to the [plea court] accepting the guilty plea when the prosecutor made several irrelevant and inflammatory accusations against the Applicant about alleged incidents which did not result in criminal charges." See Amended Application No. 11(b). In support of this allegation, Applicant cited the prosecutor's comments concerning "possibly another victim up in Maryland" and allegations that he offered two different twelve year old girls money in exchange for topless activities. See Tr. p. 13. Applicant acknowledges that Counsel objected to these comments, but alleges that this was not enough to cure any error or prejudice and that Counsel should have requested to stop the plea and allow him to stand down.

At the evidentiary hearing, Counsel testified that he thought the prosecutor's comments were impermissible and that he objected immediately. See Tr. p. 13. He testified that following his objection, the plea court requested that the prosecutor clarify exactly what conduct gave rise to each indictment subject to the guilty plea and then confirmed with Applicant that this was indeed guilty the conduct to which he was pleading guilty. See Tr. p. 14-15. Counsel testified that he made a strategic decision not to have Applicant stand down at this time out of a fear that

his client would receive a harsher sentence under a different sentencing judge, as his client was facing up to sixty years imprisonment and there was no plea offer from the State, but rather, only assurances from the plea court that Applicant would receive a sentence of no more than twenty years.

This Court finds that Applicant has failed to meet his burden of establishing any deficiency in regards to this allegation. This Court finds that Counsel's performance was reasonable and prudent based on the facts and circumstances of this case and that Applicant has failed to establish any deficiency of Counsel. Counsel's credible testimony and the record reveal that Counsel took appropriate measures to protect his client when the prosecutor commented on unindicted alleged conduct. See Tr. p. 13-15. Additionally, this Court finds that Counsel has articulated a valid strategic basis for not moving to stand down based on a legitimate and reasonable fear that his client could receive a harsher sentence from a different court without assurances for concurrent time. See Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008)) ("[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'") Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to file a notice of appeal on Applicant's behalf

Applicant alleges that Counsel was ineffective failing to file a notice of appeal on his behalf and that he is therefore entitled to appellate review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). “[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). “Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Uncontroverted testimony reveals that Counsel reviewed Applicant's right to appeal with him prior to his guilty plea – both orally and in writing – and that the plea court also reviewed this specific right with him during the guilty plea. Counsel's credible testimony reveals that Applicant knew he had ten days in which to file

an appeal and never contact him requesting an appeal. Applicant failed to present any credible evidence that he made or attempted to make such a request of Counsel. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

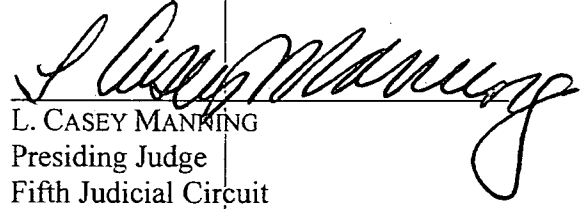
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and

2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 19 day of September, 2014.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

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